

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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Opinion 06-123

Morristown City Court Judge Serving as Juvenile Court Referee

QUESTION

May the Judge of the Morristown City Court legally serve as a juvenile court referee?

OPINION

Since the Morristown City Court is not an “inferior court” within the meaning of Article VI, Section 1, of the Tennessee Constitution, a judge of that court is not subject to the restrictions of Article VI, Section 7, of the Tennessee Constitution. No other constitutional provision or statute would prevent such dual service. Whether such service violates the Tennessee Code of Judicial Conduct is for the determination of the Judicial Ethics Committee.

ANALYSIS

This opinion addresses whether the Judge of the Morristown City Court may also serve as a juvenile court referee. Under Article VI, Section 7, of the Tennessee Constitution, the judge of an “inferior court” may not hold any other office of trust or profit under the State or the United States. It appears, however, that the Morristown City Court is not an “inferior court” within the meaning of Article VI of the Tennessee Constitution. The Morristown City Court is created under Section 5(20) of the Morristown City Charter, which provides in relevant part:

to impose fines, forfeitures and penalties for the breach of any ordinance, and to provide for their recovery and appropriation and such recovery may be had before the mayor or before the city judge, who shall be appointed by the city council as hereinafter provided, and who shall be a citizen of the city and an attorney licensed to practice law in the State of Tennessee, with jurisdiction in either of said officers to issue warrants, render judgments, issue executions and such other process as may be necessary for the enforcement of fines, forfeitures and penalties for the violation of ordinances of said corporation; . . . The office of city judge is hereby created and said judge shall be appointed for such terms and paid such salary as established by the city council through ordinance.

Morristown City Charter, § 5(20) (powers of city generally). Jurisdiction of the court, therefore, is confined to violations of city ordinances. As such, the court is not an “inferior court,” and its judge

is not subject to the requirements of Article VI of the Tennessee Constitution. *State ex rel. Johnson v. Davis*, 204 Tenn. 510, 322 S.W.2d 214 (1959); *City of Elizabethton v. Carter County*, 204 Tenn. 452, 321 S.W.2d 822 (1958). Similarly, this Office has concluded that a juvenile court referee is not the judge of an inferior court subject to the requirements of Article VI. Op. Tenn. Att’y Gen. 84-268 (September 21, 1984). Article VI, Section 7, of the Tennessee Constitution, therefore, does not prohibit the same individual from serving as the Judge of the Morristown City Court and as a juvenile court referee.

Under Article II, Section 26, of the Tennessee Constitution, no person in the state may hold more than one “lucrative office” at the same time. The Tennessee Supreme Court has concluded that the prohibition in this section refers to state offices, not local offices. *Phillips v. West*, 187 Tenn. 57, 213 S.W.2d 3 (1948). Since the offices of Judge of the Morristown City Court and of juvenile court referee are both local offices, Article II, Section 26, of the Tennessee Constitution does not bar the same individual from holding both offices. Similarly, no statute bars this dual office-holding.

A part-time city judge and a part-time juvenile court referee are both “part-time judges” subject to the Tennessee Code of Judicial Conduct. *See* Tenn. Sup. Ct. R. 10, Application of the Code of Judicial Conduct, ¶ C. Whether dual service would violate any of the applicable provisions is an issue for the Judicial Ethics Commission to determine.

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